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APPLICATION OF

**VIRGINIA ELECTRIC AND POWER COMPANY
D/B/A DOMINION VIRGINIA POWER**

CASE NO. PUE010154

**For a certificate of public convenience
and necessity for facilities in Loudoun
County: Beaumeade-Beco 230 kV
Transmission Line and Beaumeade-
Greenway 230 kV Transmission Line**

HEARING EXAMINER'S RULING

August 16, 2001

On March 15, 2001, as revised on March 23, 2001, Virginia Electric and Power Company d/b/a Dominion Virginia Power ("Virginia Power" or "Company") filed an application for approval and certification of electric facilities in eastern Loudoun County. By Commission orders dated April 9, and 12, 2001, the Commission docketed the application; appointed a hearing examiner to conduct further proceedings; established a procedural schedule for the filing of prepared testimony and exhibits; scheduled a hearing in Leesburg, Virginia; and directed Virginia Power to provide public notice of its application.

On July 11, 2001, Protestant Regency Homeowners Association, Inc. ("Regency"), by counsel, filed a special motion seeking a ruling on the validity of Virginia Power's objections to the second set of interrogatories propounded by Regency. Regency requested that the Company be compelled to provide the identities and addresses of the data center developers and potential customers upon which Virginia Power determined the need for its proposed new facilities. Regency's special motion was denied in a Hearing Examiner's Ruling dated August 7, 2001 ("Ruling").

On August 10, 2001, Regency filed a Motion to Clarify Hearing Examiner's Ruling ("Motion to Clarify") and a Motion to Compel Notice of an Alternative Corridor ("Motion for Notice"). In the Motion to Clarify, Regency states its objections to the Ruling, requests certification of the issues raised in its special motion to the Commission, and asks for clarification of the Ruling. In its Motion for Notice, Regency seeks an order directing Virginia Power to provide notice for and study of an alternative transmission route along the Loudoun County Parkway.

Motion to Clarify

Pursuant to 5 VAC 5-20-120 B, Regency has stated its objections to the Ruling. As stated in this procedural rule, Regency's objections "may be argued to the commission as part of a response to the hearing examiner's report."

As to Regency's requested certification to the Commission, the Commission's procedural rules limit certification of hearing examiner rulings.

A ruling by the hearing examiner that denies further participation by a party in interest or the commission staff in a proceeding that has not been concluded may be immediately appealed to the commission for review. Upon the motion of any party or the staff, or upon the hearing examiner's own initiative, the hearing examiner may certify any other material issue to the commission for its consideration and resolution.¹

Under the Commission's procedural rules, a ruling denying further participation of a party may be certified directly to the Commission. A hearing examiner may certify only *other material issues*. As used here, an *other material issue*, like denying further participation, refers to an issue that has a direct bearing on the outcome or the conduct of a case. From a practical perspective, a ruling on such an issue serves to decide the case. Rarely, if ever, would a discovery issue rise to the level of materiality envisioned in this rule.

In this case, denying Regency's request for the names and addresses of data centers does not have a direct bearing on the outcome of this case, *i.e.*, whether to certificate construction of the proposed transmission facility and, if so, where the facility will be constructed. Virginia Power, not Regency, continues to bear the burden of proving need. Denying Regency's request does not establish or prove need. Accordingly, I *decline to certify* the Ruling to the Commission.

Regarding Regency's request for clarification, Regency states that in addition to seeking the names and addresses of data center owners, developers, or planners, it sought documentary evidence of contracts between those parties and Virginia Power and its policies concerning retention and destruction of electronic mail. The Ruling denied Regency's request for the names and addresses of the data center owners, developers, or planners, but failed to address Regency's other requests.

As described in the Ruling, Rule 5 VAC 5-20-260 of the Commission's Rules of Practice and Procedure provides a broad standard for discovery.

Interrogatories . . . may relate to any matter not privileged, which is relevant to the subject matter involved. . . .It is not grounds for objection that the information sought will be inadmissible at the hearing if the information appears reasonably calculated to lead to the discovery of admissible evidence.²

Consistent with this standard, I find that Regency is entitled to review redacted copies of the documentary evidence and to receive the Company's policies relating to the retention or

¹ 5 VAC 5-20-120 B.

² 5 VAC 5-20-260.

destruction of electronic mail. Accordingly, the Ruling should be modified to ***grant*** Regency's special motion to compel, but limited to access to redacted copies of documentary evidence and to the Company's policies relating to the retention or destruction of electronic mail. Regency's special motion continues to be ***denied*** in all other requests.

Motion for Notice

Regency moves for an order directing Virginia Power to provide additional notice and to study an alternative transmission route along the Loudoun County Parkway. Virginia Code § 56-46.1 E provides for additional notice if the Commission is to consider a route significantly different from the route described in the original notice. The notice published by Virginia Power in this case outlined a proposed route and three alternative routes. The route Regency wants to be considered, which runs along the Loudoun County Parkway was not one of the three alternative routes contained in the original notice. However, the Loudoun County Parkway route lies between the proposed route and the alternative routes already noticed. Based on my reading of maps provided with the Company's application, the distance between the proposed route and the alternative routes contained in its notice appears to be no more than 0.6 miles. Moreover, the Loudoun County Parkway route does not appear to affect any landowners not already affected by one of the routes already noticed. Consequently, I find that the Loudoun County Parkway route is not significantly different from the routes described in the original notice. Therefore, additional notice is not required for consideration of the Loudoun County Parkway route. Moreover, based on the testimony presented at the local hearing on July 19, 2001, consideration will be given to the Loudoun County Parkway route. Accordingly, Regency's Motion for Notice is hereby ***denied***.

Alexander F. Skirpan, Jr.
Hearing Examiner